**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR**

**FRIDAY, THE 5TH OCTOBER 2007 / 13TH ASWINA 1929**

**Con.Case(C).No. 1192 of 2007(S)**

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**AGAINST THE JUDGEMENT/ORDER IN WPC.9148/2007 Dated 19/03/2007**

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**PETITIONERS:**

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1. **JOE I.MANGALY, S/O. ITTEARA, AGED 45 YEARS, MANAGING PARTNER OF MANGALY TIMBERS, B.O.C.ROAD, PALAKKAD.**

2. **JOE I.MANGALY, S/O. ITTEARA, AGED 45 YEARS, MANAGING DIRECTOR OF M/S. MANGALY INDUSTRIES PVT. LTD., B.O.C. BYE PASS ROAD, PATTIKARA, PALAKKAD.**

3. **JOE I.MANGALY, S/O. ITTEARA, AGED 45 YEARS, MANAGING DIRECTOR OF MANGALY TIMBER & FURNITURE WORKS, B.O.C.COLLEGE, BYE PASS ROAD, PATTIKARA.**

**BY ADV. SRI.K.I.MAYANKUTTY MATHER,**
**ADV. SMT.S.LAKSHMY.**

**RESPONDENT:**

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**A.C.KRISHNANKUTTY, (AGE AND FATHER'S NAME NOT KNOWN TO THE PETITIONER), THE COMMERCIAL TAX OFFICER (ON DEPUTATION), OFFICE OF THE ASSISTANT COMMISSIONER (ASSESSMENT), SPECIAL CIRCLE, COMMERCIAL TAXES, PALAKKAD, PRESENTLY WORKING AS COMMERCIAL TAX OFFICER, CHITTOOR, PALAKKAD.**

**BY GOVT.PLEADER SRI. R. LAKSHMINARAYAN.**

**THIS CONTEMPT OF COURT CASE (CIVIL) HAVING COME UP FOR ADMISSION ON 05/10/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

K.BALAKRISHNAN NAIR, J.

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CONTEMPT CASE (C) NO.1192/2007-S

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JUDGMENT

The petitioners have approached this Court, alleging violation of the direction issued by this Court in Annexure-B judgment. They point out that the prayer for extension of time and for furnishing copies of the documents made by them was ignored and final orders were passed pursuant to the notices impugned before this Court. So, the respondent has committed contempt of this Court, it is submitted.

2. The respondent has filed a statement, in which at para 4 it is submitted as follows:

> "It is respectfully submitted that as regards the contention that this respondent has disregarded the directions issued by this Honourable Court in the judgment in Writ Petition 9148/07, it is submitted that this respondent has been served with a copy of Annexure-B judgment only at 5 O'clock on 27.3.2007. The above referred judgment was produced only after the passing of final orders in two cases. Moreover it is respectfully submitted that as per the reference in Annexure-C covering letter, Annexure-B judgment and the following notices issued by this respondent have been mentioned:
>
> (1) High Court order dated 19.03.2007 in WP(C) No.9148 of 2007.
> (2) Your Notice No.31010916/02-03 dated 20.02.2007.

(3) Your Notice No.31010916/01-02 dated 05.02.2007 u/s.19 (1) of the KGST Act.
(4) Your Notice No.31010916/01-02 dtd. 05.02.2007 u/s.45A of the KGST Act.

The reference No.3 pertains to assessment under Section 19(1) of the KGST Act for the year 2001-02. The prayer for calling of documents and summoning of witnesses was with respect to the above assessment year. However, the order with respect to the above assessment year was issued during the morning hours of 27.03.2007, i.e., before the receipt of Annexure-B judgment. No other pre-assessment notices were referred along with Annexure-C covering letter. Even then, in obedience to Annexure-B judgment this respondent has considered the contentions of the petitioners for cross-examination of the witnesses and copies of documents in detail in the orders passed subsequently and has found that the request was made with mala fide intention to delay the completion of the assessment. Therefore, under no stretch of imagination it can be said that the respondent has wilfully disregarded the directions contained in Annexure-B judgment. This respondent once again reiterates that reasonable time and opportunity were given to the assessees to prove their case to their satisfaction. This respondent has not wilfully or deliberately violated the directions contained in Annexure-B judgment of this Honourable Court. This respondent has only safeguarded the interest of the State exchequer and in that process, had no intention to disregard or disobey this Hon'ble Court's direction as alleged in the petition."

Though, the petitioners' request was not granted, the above statement would show that the same was considered by the respondent and was not granted, as he felt that it was made without any bona fides.

3. I feel that in view of the above facts, it is not expedient to initiate

contempt proceedings against the respondent. But, the contentions of the petitioners that the assessments were made in violation of the principles of natural justice and their request for extension of time and for furnishing copies of the documents was rejected wrongly, are kept open. The petitioners may raise these contentions in the appeals already preferred by them against the assessment orders. Without prejudice to that right, the contempt application is closed.

5th October, 2007. **K.BALAKRISHNAN NAIR, JUDGE**.

Nm/